

049788-0102

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Bent et al.  
Serial No: 10/092,279  
Title: **SYSTEMS AND METHODS FOR PROVIDING LOAN  
MANAGEMENT FROM CASH OR DEFERRED  
INCOME ARRANGEMENTS**  
Filed: March 6, 2002  
Examiner: Harish T. Dass  
Art Unit: 3628

**DECLARATION OF BRUCE BENT II**  
**UNDER 37 C.F.R. § 1.132 ON RECOGNITION OF THE PROBLEM, MEETING**  
**A LONG FELT NEED, COMMERCIAL SUCCESS AND NON-OBVIOUSNESS**

Assistant Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

I, the undersigned Bruce Bent II, an American citizen with an office at 1250 Broadway, New York, NY 10001-3701, USA, hereby declare and state that:

**Background**

1. I am a co-inventor of the invention described and claimed in the above-captioned patent application. I am familiar with the claims and specification of the above-referenced application and with U.S. Patent No. 5,206,803 by Vitagliano et al. ("the '803 patent"), U.S. Patent No. 6,105,007 by Norris ("the Norris patent"), U.S. Patent No. 5,884,285 by Atkins ("the Atkins patent"), and U.S. Patent No. 5,214,579 by Wolfberg et al. ("the Wolfberg patent") and have read the Office action mailed February 17, 2005. I have also read the declaration signed on October 4, 2004 (attached hereto) of Mark Vernaglia ("the Vernaglia Declaration"). Mr. Vernaglia worked for me as President of Reserve Solutions, Inc., the assignee of the above-captioned patent application.

2. I am Vice President of Reserve Solutions, Inc., the assignee of this application, and in that capacity, I have managed and overseen Reserve Solutions'

conception and development of a commercial product, offered under the name of ReservePlus<sup>SM</sup>, implementing the invention described in the above-referenced application.

3. Prior to Reserve Solutions I worked at The Reserve Funds for fourteen years and continue to do so as President. I am a Graduate of Northeastern University. Thus, I have 14 years in the banking industry and at least 4 years of experience in the benefit plan industry.

Reserve Solutions, Inc.'s ReservePlus Product

4. At Reserve Solutions, Inc., my staff, including Mr. Mark Vernaglia, who was President at the time, in the course of the design, development and implementation of the ReservePlus<sup>SM</sup> product, reported to me on meetings and discussions they had on industry practice, industry issues and industry challenges regarding benefit plan loan administration, process and management with over twenty five (25) companies including:

- Administaff
- ADP Retirement Services
- Annuity Board, SBC
- Bank of Oklahoma
- City National Bank
- Benefit Plan Administrators
- Bisys
- SunGard
- PAG
- Guardian
- Hartford Life
- M&I Trust
- Hand Benefits & Trust
- Met Life
- TruSource.

Mr. Vernaglia, in particular reported to me on his meetings with companies in the benefit plan industry.

5. The ReservePlus<sup>SM</sup> product provides loans for participants in benefit plans, such as 401(k) plans, from loan funds that are established for participants and funded with specifically segregated funds transferred from their 401(k) accounts. The loan fund, including the assets segregated for the loan fund and available for future loans and the debt due from the participant, plus the other investments, make up the benefit plan. The ReservePlus<sup>SM</sup> product has been implemented in various embodiments including the following:

- a. **The ReservePlus<sup>SM</sup> computer system** provides loans to a participant having assets in a benefit plan account, the benefit plan account of the participant comprising a plurality of investments, the computer system comprising:
  - at least one processor; and
  - a computer-readable memory operatively connected to the at least one processor, with instructions capable of performing steps comprising:
    - receiving information reflecting a loan request for a loan-request amount of funds made by the participant from a loan fund, wherein the loan fund is defined as a separate asset-funded account from which money is drawn for loans, wherein the loan fund is one of the plurality of investments in the benefit plan account;
    - verifying that the loan-request amount does not exceed a current balance of available funds in the loan fund using account information for the loan fund, the account information for the loan fund being stored by the computer system separately from account information for the benefit plan account;
    - initiating transfer of the amount of funds requested by the participant loan request from the loan fund if the loan-request amount has been verified to not exceed the current balance of available funds in the loan fund; and
    - updating the account information for the loan fund that is separately stored from account information for the benefit plan account to reflect the loan-request amount of funds transferred from the loan fund using an accounting process that computes the current balance of available funds in the loan fund based on redemptions and payments from the amount of assets in the loan fund and does not change a loan fund asset amount listed in the account information of the benefit plan account relating to the loan fund.

See claim 58 of the above-referenced application as now amended.

- b. In another embodiment, the **ReservePlus<sup>SM</sup> computer system** provides loans to a participant having assets in a benefit plan account, the benefit plan account of the participant comprising a plurality of investments, the computer system comprising:
- at least one processor; and
  - a computer-readable memory operatively connected to the at least one processor, with instructions capable of performing steps comprising:
    - computing using an accounting process a current balance of available funds in a loan fund based on redemptions and payments from an amount of assets in the loan fund, wherein the loan fund is defined as a separate asset-funded account from which money is drawn for loans, wherein the loan fund is one of the plurality of investments in the benefit plan account, wherein the accounting process does not change a loan fund asset amount listed in the account information of the benefit plan account relating to the loan fund, wherein the accounting process stores the current balance of available funds in the loan fund as account information for the loan fund separately from the account information for the benefit plan;
    - receiving information reflecting a loan request for a loan-request amount of funds made by the participant from the loan fund;
    - verifying that the loan-request amount does not exceed the current balance of available funds in the loan fund using the account information for the loan fund; and
    - sending information reflecting rejection of the loan request if the loan request has not been verified because the loan-request amount exceeds the current balance of available funds in the loan fund for the loan request.

See claim 75 of the above-referenced application as amended.

- c. In yet another embodiment, the **ReservePlus<sup>SM</sup> computer system** manages loans to a participant having assets in a benefit plan account, the benefit plan account of the participant comprising a plurality of investment assets, the computer system comprising
- at least one processor; and
  - a computer-readable memory operatively connected to the at least one processor, comprising
    - computer code capable of being executed by a computer comprising computer code for a loan account file for the loan fund, wherein the loan fund is defined as a separate asset-funded account from which money is drawn for loans, the loan fund account file being segregated from a loan fund investment asset listing in a benefit plan account, wherein the loan

account file includes a current balance of available funds, and wherein the loan fund is one of the plurality of investment assets in the benefit plan account;

computer code for a first accounting process that updates the current balance of available funds in the loan account file using loan redemption information and loan payment information, wherein the first accounting process does not change a loan fund asset amount listed in the account information in the benefit plan account relating to the loan fund; and

computer code for sending information for use by a second accounting process to make interest or other income adjustments in the benefit plan account.

See claim 105 of the above-referenced application as amended.

6. Thus, in selected embodiments of the invention as defined in the foregoing paragraph a “loan fund”, which is a separate account with assets, is funded with assets from the pension benefit plan against which loans can be drawn, so that the accounting for redemptions and payments from credit cards and other loan initiating vehicles can in one embodiment be performed entirely by a separate computer or computer system, such as the computer run by Reserve Solutions, independently of the 401(k)-plan management companies (known in the industry as “recordkeepers”). While the separate computer can be at a different entity, it may also be part of the recordkeeper’s computer system. What is significant is not the location of the separate computer, but rather that it is a segregated accounting process for the loan fund to keep track of withdrawals and redemptions so that each time a withdrawal or redemption occurs, the recordkeepers accounting for the benefit plan as a whole do not need to be updated. Accordingly, Reserve Solutions’ commercial embodiment of the present invention uses a separate account process that keeps track of and processes each redemption and each payment against the separate asset(s) in the loan fund to calculate a current balance of available funds in the loan fund, but without changing a loan fund asset amount listed in the account information of the benefit plan account relating to the loan fund. This is accomplished because as far as the loan fund asset amount listed in the account information of the benefit plan account is concerned the value of the “loan fund” remains constant despite redemptions from and payments to the “loan fund”, since its

value would be the total funds in the loan funds plus the total debts due by the debtor to the loan fund. In other words, the amount of the assets listed for the loan fund in the benefit plan account remains the same in this inventive configuration regardless of the redemptions made from and payments made to the loan fund. Thus, this inventive configuration based on a separate asset-funded account, i.e., the loan fund, allows the accounting process for the loan fund to be divorced from the accounting process used for the benefit plan accounts. Thereby, the pension benefit plan recordkeepers can manage participant loan funds as the systemic equivalent of their other managed participant investments in, for example, mutual funds. This is important, because each recordkeeping company usually serves several pension benefit plans offered by several sponsors having total enrollments of hundreds of thousands to millions of participants.

The Cited Prior Art Do Not Disclose The Present Invention

7. I have also reviewed the prior art cited by the Examiner in the February 17, 2005 Office Action, including the Vitagliano patent, the Atkins patent, the Norris patent, and the Wolfberg et al. patent. In my opinion, and based on my experience at Reserve Solutions, none of these other patents would teach or suggest to someone of ordinary skill in the art of Pension Benefit Plan Administration that the system disclosed in the '803 Patent should be implemented using a separate/ segregated "loan fund" that is asset-funded so that money is drawn directly from the loan fund for loans, where this loan fund is just one of a plurality of investments in a benefit plan account, in accordance with the present invention. Further, it is my opinion that none of these patents disclose the Use of an Accounting Process with such a Loan Fund that does not Change a loan fund asset amount listed in the Account Information of the Benefit Plan Account that lists the Loan Fund as an asset. Thus, none of these patents disclose the limitations

*"a loan fund, wherein the loan fund is defined as a separate asset-funded account from which money is drawn for loans, wherein the loan fund is one of the plurality of investments in the benefit plan account"*

*“updating said account information for said loan fund that is separately stored from account information for said benefit plan account to reflect said loan-request amount of funds transferred from said loan fund using an accounting process that computes the current balance of available funds in the loan fund based on redemptions and payments from the amount of assets in the loan fund and does not change a loan fund asset amount listed in the account information of the benefit plan account relating to the loan fund.”*

(Emphasis added).

8. These claim limitations operate together with other limitations to make a non-obvious combination that creates a synergy to allow the accounting processes for the asset-funded account that is a loan fund and for the benefit plan account to be separated/segregated, to thereby divorce the individual loan-request process from the fluctuating asset values in the benefits plan, so as to provide a substantially fixed loan fund amount against which to make loans, and divorces the redemption/payment process required for credit cards and other loan initiating vehicles from the accounting process for the benefit plan.

Vitagliano (the ‘803 Patent) Does Not Disclose Using A Loan Fund

9. Referring to Vitagliano, there is disclosed a single benefit plan account wherein money for a loan is not drawn from a separate fund, but rather is drawn from a line of credit based on the total assets for the benefit plan account, with the result that the loan limit fluctuates with the value of the assets in the benefit plan account and the benefit plan account must perform the accounting processes for each loan granted or redemption paid against the total assets.

10. In particular, Vitagliano states that it provides a line of credit (not an account that is asset-funded), that is drawn against the assets of the entire benefit plan. In this regard, see Vitagliano at column 2, line 36 – column 3, line 11, lines 22-28, lines 32-43. It is my opinion that first, the ‘803 Patent teaches that the Available Capital which provides the basis for the credit, is tied directly to the fluctuating asset values in the overall benefit plan account, and does not disclose or suggest the limitation

*“initiating transfer of said amount of funds requested by said participant loan request from said loan fund,”*

where the loan fund is a separately asset-funded source of money.

11. Additionally, it is my opinion that the pension plan of Vitagliano requires that all accounting for the redemptions and payments for the loans be performed using an accounting process that operates on the assets of the entire benefits plan. Thus, the updating limitation

*“updating said account information for said loan fund that is separately stored from account information for said benefit plan account to reflect said loan-request amount of funds transferred from said loan fund using an accounting process that computes the current balance of available funds in the loan fund based on redemptions and payments from the amount of assets in the loan fund and does not change a loan fund asset amount listed in the account information of the benefit plan account relating to the loan fund”*

is also not met.

The Other Patents Do Not Render The Present Invention Obvious

12. In my opinion, the other patents cited in the February 17, 2005 Office Action do not make up the deficiencies of the '803 patent and one of ordinary skill in the benefit plan industry at the time of our invention would not be motivated to take pieces of each of these references to arrive at our invention without the hindsight use of our patent specification as a blueprint:

- a. My study of the Norris patent (5,884,285) indicates that it relates to a processing system for use with a kiosk that provides automatic processing to authorize loans, set up checking accounts, set up savings accounts retirement accounts and issue credit cards.
- b. My study of the Atkins patent (5,884,285) indicates that it relates to a mortgage-backed investment vehicle where the regular amortization payments for a mortgage are invested instead in a pension plan, IRA, Keogh or other benefit plan.
- c. My study of the Wolfberg et al. patent (5,214,579) indicates that it relates to a system for creating an investment program for a defined benefit plan that will have a minimum rate of return, and also provides limited



borrowing privileges against the account by permitting check writing or loans against a predetermined percentage of funds that exceed a minimum guaranteed rate of return in the main investment account, i.e., the amount of the fund available for a loan is directly tied to investment gains in the main account. Additionally, the funds for honoring the checks are extracted from the entire assets of the fund.

Prior Art Computer Systems Implementing Vitagliano Failed

13. The inventors of the ReservePlus<sup>SM</sup> computer system defined in paragraph 5 above, Bruce Bent, Mark Vernaglia and the undersigned, as will be explained in the succeeding paragraphs, recognized as part of our invention, problems with current benefit plans that attempt to grant loans against the corpus as a whole and without the benefit of a separated/segregated "loan fund", and in response we created a computer system as defined in paragraph 5 above that met a long felt need and achieved commercial success in a short period of time.

14. Based on reports to me from my staff, my own personal knowledge of the benefit plan industry and its loan practices, and the information reported in paragraphs 9, 10, 11, 12, 13, 16 and 18 of the Vernaglia Declaration, my conclusion is that there were multiple failed attempts by well-funded sophisticated banks and financial management companies, such as BankOne, GoldK, and SunGard to use the invention described in the '803 patent to provide loans to participants in 401(k) plans. Based on those staff reports including Mr. Vernaglia's reports made in the ordinary course of running Reserve Solutions, Inc., we made business decisions relating to how Reserve Solutions, Inc. operated its business. I will provide details of the reports made to me in the following paragraphs.

BankOne Failed Using Vitagliano's System

15. Specifically, one of the companies my staff approached was **BankOne**. My staff reported conversations in early 2002 with two executive managers of **Pyramid Digital Solutions LLC**, a provider of software and technology services for retirement plan administrators. Because Pyramid Digital Solutions had performed work for BankOne, these managers had knowledge of BankOne's attempts to use the invention

described in the '803 patent to provide loans to participants in 401(k) plans. I was told, and it is verified by paragraph number 11 in the Vernaglia Declaration, that BankOne took a license in the '803 patent. My staff told me that BankOne had begun development during late 1995 of a product based on the '803 patent that maintained a line of credit accounted against the assets of the entire benefit plan so that each time money was borrowed against the line of credit, it was subtracted from the assets of the entire benefit plan. However, this development was abandoned in December, 1996, because BankOne was unable to develop a workable system based on the '803 patent. I have read paragraph numbers 10 and 11 of the declaration of Mark Vernaglia signed on October 4, 2004 and they are consistent with what was reported to me about BankOne's failed attempt to implement the '803 patent.

16. The BankOne product based on the '803 patent that was reported to me and is referenced in the Vernaglia Declaration in paragraph numbers 10 and 11 did not create a separate and segregated "loan fund", i.e., a separate account funded with assets from which loans can be drawn, but rather maintained a line of credit accounted against the assets of the entire benefit plan so that each time money was borrowed against the line of credit, it was accounted against the assets of the entire benefit plan. That means that:

- a. The BankOne loans to 401(k) plan participants were funded directly from the corpus of the participants' 401(k) accounts.
- b. The BankOne line of credit was not to be a segregated asset-funded account that could in one embodiment be invested in stable value assets.
- c. The BankOne record keeping was not segregated from the 401(k)-plan recorderkeepers record keeping.

Thus BankOne's failed development would have required 401(k)-plan management companies and recordkeepers to undertake accounting for each and every participant loan, using an accounting process that during the accounting of redemptions from and payments to the line of credit, changed a loan fund asset amount listed in the account information of the benefit plan account relating to the line of credit as part of this accounting process.

17. This means that the BankOne product based on the '803 patent did not carry out the combination of steps of:

- a. receiving information reflecting a loan request for a loan-request amount of funds made by the participant from a loan fund, wherein the loan fund is defined as a separate asset-funded account from which money is drawn for loans, wherein the loan fund is one of the plurality of investments in the benefit plan account;
- b. verifying that the loan-request amount does not exceed a current balance of available funds in the loan fund using account information for the loan fund, the account information for the loan fund being stored by the computer system separately from account information for the benefit plan account;
- c. initiating transfer of the amount of funds requested by the participant loan request from the loan fund if the loan-request amount has been verified to not exceed the current balance of available funds in the loan fund; and
- d. updating the account information for the loan fund that is separately stored from account information for the benefit plan account to reflect the loan-request amount of funds transferred from the loan fund using an accounting process that computes the current balance of available funds in the loan fund based on redemptions and payments from the amount of assets in the loan fund and does not change a loan fund asset amount listed in the account information of the benefit plan account relating to the loan fund.

18. Likewise, this means that the BankOne product based on the '803 patent did not carry out the combination of steps of

- a. computing using an accounting process a current balance of available funds in a loan fund based on redemptions and payments from an amount of assets in the loan fund, wherein the loan fund is defined as a separate asset-funded account from which money is drawn for loans, wherein the loan fund is one of the plurality of investments in the benefit plan account, wherein the accounting process does not change a loan fund asset amount listed in the account information of the benefit plan account relating to the loan fund, wherein the accounting process stores the current balance of available funds in the loan fund as account information for the loan fund separately from the account information for the benefit plan;
- b. receiving information reflecting a loan request for a loan-request amount of funds made by the participant from the loan fund;
- c. verifying that the loan-request amount does not exceed the current balance of available funds in the loan fund using the account information

for the loan fund; and sending information reflecting rejection of the loan request if the loan request has not been verified because the loan-request amount exceeds the current balance of available funds in the loan fund for the loan request.

19. Likewise, this means that the BankOne product based on the '803 patent did not include program products or computer systems with:

- a. computer code for a loan account file for the loan fund, wherein the loan fund is defined as a separate asset-funded account from which money is drawn for loans, the loan fund account file being segregated from a loan fund investment asset listing in a benefit plan account, wherein the loan account file includes a current balance of available funds, and wherein the loan fund is one of the plurality of investment assets in the benefit plan account;
- b. computer code for a first accounting process that updates the current balance of available funds in the loan account file using loan redemption information and loan payment information, wherein the first accounting process does not change account information in the benefit plan account; and
- c. computer code for sending information for use by a second accounting process to make interest or other income adjustments in the benefit plan account.

Thus, the product being developed by these companies would have provided loans to 401(k) plan participants directly from the corpus of their 401(k) and the product itself would have undertaken a single accounting process for all participant loans and the benefit plans. As a result, the system BankOne tried to implement used the Vitagliano '803 patent was an administrative nightmare and lead to BankOne's abandonment of their commercial product in accordance with the '803 patent.

SunGard Data Systems Failed Using The Vitagliano '803 patent

20. Regarding failed attempts of others to carrying out the '803 patent and long felt need in the benefit plan administration industry for our invention, my staff also reported to me the following regarding their approach to **SunGard Data Systems**, a company that provides a recordkeeping software platform which is used by recordkeepers of 401(k) plans with approximately 30 million of the estimated 50 million participants in all 401(k) plans nationwide.

21. In December, 2002, my staff had discussions with two executive managers at SunGard. These managers stated to my staff that SunGard had been approached in 1995 and earlier by several of their clients who were interested in using the invention described in the '803 patent to provide loans to participants in 401(k) plans. Thus, I understood these statements to evidence a long felt need in the industry for a program which would allow for efficient loan processing against pension benefit plans beginning at least as early as 1995.

22. Because of the potential business opportunity of providing software based on the '803 patent in a manner as discussed in paragraph numbers 15-19, SunGard began development on such a product during 1995. In particular, these executive managers at SunGard told my staff that the product SunGard was trying to develop would have enabled SunGard's existing Omni record-keeping system product to provide and manage loans to 401(k) plan participants directly from the corpus of the participants 401(k) accounts. Thus, the SunGard product being developed operated in accordance with the '803 patent and had the same problems noted above with respect to the BankOne product, see paragraphs 15 - 19, above. In particular, the SunGard product, like the BankOne product discussed above, placed the burden of accounting for participant loans directly on the 401(k)-plan recordkeepers. These SunGard Executive managers stated to my staff that SunGard abandoned this development during 1996, because even SunGard could not produce a workable product based on the '803 patent. Specifically, the problems surrounding creating a single accounting system for both the benefit plan account and the line of credit with the attributes as defined in paragraphs 15-19 above led to the failure. I have read paragraph numbers 12 and 13 of the Vernaglia Declaration and they are consistent with what was reported to me by my staff.

GoldK Also Tried And Failed To Implement The '803 Patent

23. Reserve Solutions has also learned of the failed attempt by **GoldK** to implement the '803 patent system by Vitagliano. This failed attempt was reported to me by staff based on their approach to GoldK. Specifically, my staff held discussions at GoldK's offices during August 2004 with management, including Ms. Dierdre Duffy and

Mr. Thomas Haggerty, to encourage their adoption of the ReservePlus<sup>SM</sup> product. During these discussion, my staff was told that GoldK, under license, began development in early 2003 of a product that would have used the invention described in the '803 patent with the same design as defined in paragraph numbers 15-19 above for BankOne. In particular, my staff was told that the product being developed by GoldK would have provided loans to 401(k) plan participants directly from the corpus of their 401(k) without any loan fund or formation of a segregated asset-funded account, that could be invested in stable value assets and that the product itself would have undertaken a single accounting process for all participant loans and the benefit plans. GoldK told my staff that they abandoned development of this product at the beginning of 2004, because, in their words, they "could not get it to work." I have reviewed paragraph number 16 of the Vernaglia Declaration and confirm that it is consistent with what was reported to me by my staff.

#### Conclusion Regarding Failure Of Others and Long Felt Need

24. My opinion, based on the evidence set forth in paragraph numbers 14-23 above of my Declaration and paragraph numbers 9, 10, 11, 12, 13, 16 and 18 of the Vernaglia Declaration, relating to multiple failed attempts to implement the '803 system is that there was **a long felt need** for a solution in the area coupled with a failure in the art to recognize the problems with the '803 patent that made it unworkable.

#### Commercial Success Of The Present Invention As Implemented By Reserve Solutions

25. In contrast to the failed attempts by others to implement the '803 patent computer system as discussed above, efforts by **Reserve Solutions** and its customers to implement the present invention in the form of **the ReservePlus<sup>SM</sup> product** has been a commercial success.

26. Specifically, the ReservePlus<sup>SM</sup> product as defined in paragraph 5 above, has achieved notable commercial success and acceptance among 401(k)-plan recordkeeping and management companies in the short time since Reserve Solutions began offering it in June 2003. As discussed below, the ReservePlus<sup>SM</sup> product is being implemented by SunGard Employee Benefit Systems ("**SunGard**"), a unit of the

financial management giant SunGard Data Systems, Inc., and by **Benefit Plans Administrators**. I have read paragraphs 6, 7, 8, 14, 15, 17, 18 and 19 of the Vernaglia Declaration, and they are consistent with my belief in the commercial success of the ReservePlus<sup>SM</sup> product over a short period of time.

Sungard's Implementation Of ReservePlus<sup>SM</sup> Product  
Has Been A Commercial Success

27. Reserve Solution's experience with SunGard's adoption of our ReservePlus<sup>SM</sup> product has demonstrated the present invention to be a commercial success.

28. During June 2003 my staff held further discussions with executive management at SunGard to encourage their adoption of ReservePlus<sup>SM</sup> product. During these discussions, my staff explained to SunGard that in one embodiment, the ReservePlus<sup>SM</sup> product provides loans for participants in 401(k) plans from loan funds that are established for participants and funded with assets transferred from their 401(k) accounts, wherein the ReservePlus<sup>SM</sup> computer system operates as defined in paragraph number 5 above.

29. These embodiments described above result in loans to 401(k)-plan participants from loan funds established for each participant, so that the loan funds are effectively segregated/separated from the 401(k)-plan accounts and so that the burden of accounting for the normal loan/credit card transactions relating to the loan fund is removed from 401(k)-plan recordkeepers, SunGard's clients.

30. My staff reported to me that SunGard management, in particular Mr. Billy Morris, manager of SunGard product development, immediately found the **ReservePlus<sup>SM</sup>** product to be innovative and commercially attractive. Significantly, SunGard Employee Benefit Systems ("SunGard"), a unit of the financial management giant SunGard Data Systems, Inc. and provider of the retirement plan recordkeeping software and systems which are used by recordkeepers of 401(k) plans with approximately 30 million of the estimated 50 million participants in all 401(k) plans nationwide, has embraced the **ReservePlus<sup>SM</sup>** product as defined in paragraph number

5 above. SunGard has committed contractually to interface the **ReservePlus<sup>SM</sup>** product to all its recordkeeping platforms. Thus, commercial clients of SunGard with over 30 million plan participants will eventually be connected to the SunGard platform and may grant access at will to the **ReservePlus<sup>SM</sup>** product.

31. I have reviewed paragraphs 7, 8, 14 and 15 of the Vernaglia Declaration and they are consistent with my understanding and what was reported to me by my staff regarding commercial success with SunGard.

Benefit Plan Administrators Adoption Of The ReservePlus<sup>SM</sup> Commercial Embodiment Of The Present Invention Is Also A Commercial Success

32. Likewise, in response to explanations by my staff of the ReservePlus<sup>SM</sup> product as described above, Benefit Plan Administrators adopted the ReservePlus<sup>SM</sup> product, and it is now available to participants in 401(k)-plans for which Benefit Plan Administrators is the recordkeeper.

Conclusion Regarding Commercial Success Of The Present Invention

33. In my opinion, based on Reserve Solutions experience in implementing the ReservePlus<sup>SM</sup> product, which is the commercial embodiment of the present invention as presently claimed, see paragraph 5 above, the present invention has been a commercial success over a very short period of time.

Conclusions

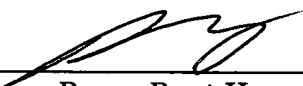
34. Accordingly, it is my opinion as a person of at least ordinary skill in the art, and probably more than ordinary skill in the art of benefit plan administration and loan operations, that the foregoing evidence of reports from my staff, my personal knowledge, and the cited paragraphs in the Vernaglia Declaration regarding failure in the art of well-funded sophisticated benefit plan administration and loan operations to recognize the problems in the '803 patent as set forth herein that were causing the recited attempts to offer a commercially viable loan program to fail, much less arrive at the solution as defined in paragraph 5 above, further coupled with the evidence as recited above and confirmed in the Vernaglia Declaration of customer demand for such a product beginning at least as early as 1995, i.e., a long felt need in the industry, further

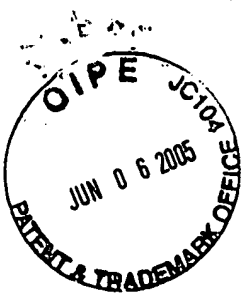


coupled with the evidence recited above and confirmed in the Vernaglia Declaration of the commercial success for the ReservePlus<sup>SM</sup> product as defined in paragraph number 5 above in the short period of time since Reserve Solutions began to offer the ReservePlus<sup>SM</sup> product in June 2003, and further coupled with my opinion that none of the four patents disclose the invention as defined in paragraph 5 above and that one of ordinary skill in the art at the time of the invention would not have been motivated to take pieces of each of these references to arrive at my invention as defined in paragraph 5 above, that the claimed embodiments are not only novel, but clearly non-obvious to one of ordinary skill in the benefit plan industry at the time of the invention.

36. I hereby declare that all statements made herein, unless otherwise indicated, are of my own knowledge and are true, and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements can jeopardize the validity of any patent issuing from the captioned application or claiming the benefit of its priority.

Dated: June 1, 2005  
New York, N.Y.

Signed by:   
Bruce Bent II



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Bent et al.  
Serial No: 10/092,279  
Title: SYSTEMS AND METHODS FOR PROVIDING LOAN  
MANAGEMENT FROM CASH OR DEFERRED INCOME  
ARRANGEMENTS  
Filed: March 6, 2002  
Examiner: Harish T. Dass  
Art Unit: 3628  
Docket No.: 0001815USU (formerly: 11559-003-999)  
Confirmation No.: 7722  
Customer No.: 27,623

**DECLARATION OF MARK VERNAGLIA**  
**UNDER 37 C.F.R. § 1.132**

Assistant Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

I, the undersigned Mark Vernaglia, an American citizen residing at 3 Jockey Terrace, Colts Neck, NJ, 07722, USA, hereby declare and state that:

1. I am a co-inventor of the invention described and claimed in the above-captioned application. I am familiar with the claims and specification of this application and with U.S. patent no. 5,206,803 by Vitagliano et al. ("the '803 patent"), and have read the Office action mailed May 6, 2004.

2. I am President of Reserve Solutions, Inc., the assignee of this application, and in that capacity, I have managed and overseen Reserve Solutions' conception and development of a commercial product, offered under the name of ReservePlus<sup>SM</sup>, implementing the invention described in this application.

3. Unless otherwise stated, I have personal knowledge of all of the facts and circumstances set forth herein.

4. The ReservePlus<sup>SM</sup> product provides loans for participants in 401(k) plans from loan funds that are established for participants and funded with funds transferred from their 401(k) accounts. The loan funds are segregated from the corpus of the participants' 401(k)-plan accounts and are invested in stable value (cash equivalent) assets. Accounting for participants' loans and for their loan funds is performed entirely by Reserve Solutions, independently of the 401(k)-plan management companies (known in the industry as "recordkeepers"). Thereby, the 401(k)-plan recordkeepers can manage participant loan funds as the systemic equivalent of their other managed participant investments in, for example, mutual funds. This is important, because each recordkeeping company usually serves several 401(k) plans offered by several sponsors having total enrollments of hundreds of thousands to millions of participants.

5. As seen by 401(k)-plan recordkeeping companies, instead of having to undertake the considerable additional accounting tasks necessary to provide participant loans directly from the corpus of 401(k)-plan accounts as was the case in the prior art systems, the ReservePlus<sup>SM</sup> product allows for recordkeeping companies using the system of the present invention to interface and integrate their existing recordkeeping systems to the ReservePlus<sup>SM</sup> product. What previously was a difficult and cumbersome task for record keepers becomes a largely routine and simple task just because the record keepers can manage ReservePlus<sup>SM</sup> loan funds as the systemic equivalent of other participant investments they already manage.

6. Importantly, the ReservePlus<sup>SM</sup> product has achieved notable commercial success and acceptance among 401(k)-plan recordkeeping and management companies. Reserve Solutions is in extensive discussions and negotiations with recordkeeping companies of 401(k) plans with over 5 million participants, including Benefit Plans Administrators, PAG, Inc., Motivate, JW Seligman, GoldK, Inc. ("GoldK"), and Bisys Retirement Services. These

recordkeepers are in the process of, or are very interested in, making the ReservePlus<sup>SM</sup> product available to their participants.

7. Significantly, SunGard Employee Benefit Systems ("SunGard"), a unit of the financial management giant SunGard Data Systems, Inc. and provider of the Omni® and OmniPlus® retirement plan recordkeeping software and systems which are used by recordkeepers of 401(k) plans with approximately 30 million of the estimated 50 million participants in all 401(k) plans nationwide, has embraced the ReservePlus<sup>SM</sup> product. SunGard has just recently completed interfacing and integration of the ReservePlus<sup>SM</sup> product into their Omni software and systems. Commercial clients of these SunGard products now have simplified access to the ReservePlus<sup>SM</sup> product and it can ultimately be easily made available to as many as 30 million plan participants.

8. Several recordkeepers have already made the ReservePlus<sup>SM</sup> product available to participants in the plans they serve. Many thousands of participants of these plans where the ReservePlus<sup>SM</sup> product is available are participating in the ReservePlus<sup>SM</sup> loan program.

9. During the conception and development of the ReservePlus<sup>SM</sup> product, I became aware of several failed attempts by sophisticated banks and financial management companies, such as BankOne, GoldK, and even SunGard to use the invention described in the '803 patent to provide loans to participants in 401(k) plans. My knowledge of these attempts includes the following facts.

10. In the case of BankOne, I had conversations in early 2002 with two executive managers of Pyramid Digital Solutions LLC, a provider of software and technology services for retirement plan administrators. Because Pyramid Digital Solutions had performed work for BancOne, these managers had knowledge of BancOne's attempts to use the invention described in the '803 patent to provide loans to participants in 401(k) plans. They told me that BancOne

had begun development during late 1995 of a product based on the '803 patent, but had abandoned this development in December, 1996, because BancOne was unable to develop a workable system based on the '803 patent.

11. I was also told, in particular, that BancOne, under a license to the '803 patent, had attempted to develop a product that would have provided loans to 401(k) plan participants funded directly from the corpus of the participants' 401(k) accounts. Loan funds were not to be a segregated part of the 401(k) accounts nor necessarily to be invested in stable value assets. Thereby BancOne's failed development would have required 401(k)-plan management companies, recordkeepers, to undertake accounting for each and every participant loan.

12. In the case of SunGard, I had discussion with two executive managers at SunGard in December, 2002. These managers told me that in 1995 and earlier SunGard had been approached by several of their clients who were interested in using the invention described in the '803 patent to provide loans to participants in 401(k) plans. Because of the potential business opportunity of providing software based on the '803 patent, SunGard began development on such a product during 1995. However, SunGard abandoned this development during 1996, because even SunGard could not produce a workable product based on the '803 patent.

13. In particular, I was told that the product SunGard was trying to develop would have enabled SunGard's existing Omni record-keeping system product to provide and manage loans to 401(k) plan participants directly from the corpus of the participants 401(k) accounts. Loan funds were not to be a segregated part of the 401(k) accounts, nor were they necessarily to be invested in stable value assets. Thus, this product would have placed the burden of accounting for participant loans directly on the 401(k)-plan recordkeepers.

14. Later, during June 2003 and when design of the ReservePlus<sup>SM</sup> product was more advanced, I held further discussions with executive management at SunGard to encourage their adoption of this product. During these discussions, I explained that the ReservePlus<sup>SM</sup> product provides loans to 401(k)-plan participants from loan funds established for each participant; that the loan funds are segregated from the 401(k)-plan accounts; and that the loan funds are invested in stable value assets. I also explained that Reserve Solution undertook accounting for participant loans, and thereby removed this burden from 401(k)-plan recordkeepers, SunGard's clients. SunGard management, in particular Mr. Billy Morris, manager of SunGard product development, immediately found the ReservePlus<sup>SM</sup> product to be innovative and commercially attractive.

15. SunGard then undertook the development and integration of the ReservePlus<sup>SM</sup> product into SunGard's Omni® and OmniPlus® retirement plan recordkeeping software and systems, which it completed in early 2004. Actual use of the ReservePlus<sup>SM</sup> product through these SunGard products, which are used by recordkeepers of 401(k) plans with about 60% of all plan participants, is continually increasing.

16. In the case of GoldK, I held discussions at GoldK's offices during August 2004 with management, including Ms. Dierdre Duffy and Mr. Thomas Haggerty, to encourage their adoption of the ReservePlus<sup>SM</sup> product. During these discussion, I was told that GoldK, under license, began development in early 2003 of a product that would have used the invention described in the '803 patent to provide loans to participants in 401(k) plans. In particular, I was told that the product being developed by GoldK would have provided loans to 401(k) plan participants directly from the corpus of their 401(k) without any segregation into individual loan funds to be invested in stable value assets. This product itself would have undertaken accounting for all participant loans. GoldK abandoned development of this product at the beginning of 2004, because, in their words, they "could not get it to work".

17. During these discussions, I explained the ReservePlus<sup>SM</sup> product: that it provides loans to 401(k)-plan participants from loan funds that are established for each participant, are segregated from the 401(k)-plan accounts, and are invested in stable value assets. I also explained how this product removed the burden of accounting for participant loans from 401(k)-plan recordkeepers, such as GoldK. In response, GoldK decided to adopt the ReservePlus<sup>SM</sup> product, and it is now available to participants in 401(k)-plans for which GoldK is the recordkeeper.

18. In summary, none of the past attempts to implement the systems and methods of the '803 patent, which was issued in April, 1993, have achieved commercial success. It is my belief that, had the systems and methods of the '803 patent been commercially viable, companies of the caliber of BankOne, GoldK, and SunGard would have succeeded. In contrast, the ReservePlus<sup>SM</sup> product is achieving increasing commercial success since its public availability in June, 2003. And as a component of SunGard's OmniPlus recordkeeping system, it is available to recordkeepers for 401(k) plans with over 30 million participants.

19. In my experience as President of Reserve Solutions, Inc., this commercial success is due to the ease, simplicity, and rapidity by which 401(k)-plan recordkeeping and management companies can implement through the use of a segregated loan fund and offer to their customers an advantageous new 401(k)-plan feature. This ease and simplicity is directly based on establishment of loan funds for participants, segregation of loan funds from 401(k)-plan accounts, and investment of loan funds in stable value assets.

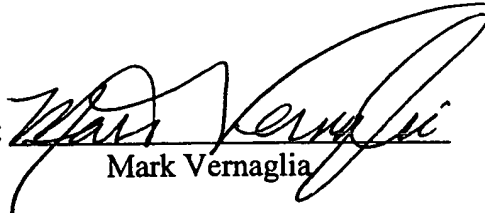
20. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such

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willful false statements can jeopardize the validity of any patent issuing from the captioned application or claiming the benefit of its priority.

Dated: October 4, 2004  
New York, N.Y.

Signed by:

  
Mark Vernaglia